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**BOARD OF LAND AND NATURAL RESOURCES**

**FOR THE STATE OF HAWAI'I**

IN THE MATTER OF

Case No. BLNR-CC-16-002

A Contested Case Hearing Re Conservation  
District Use Permit (CDUP) HA-3568 for the  
Thirty Meter Telescope at the Mauna Kea  
Science Reserve, Kahohe Mauka, Hamakua  
District, Island of Hawai'i, TMK (3) 4-4-  
015:009

**PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES,  
INC.'S MEMORANDUM IN  
OPPOSITION TO MEHANA KIHOI'S  
MOTION FOR RECONSIDERATION TO  
DENY THE INTERVENTION OF  
PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES AS A  
PARTY IN THE CONTESTED CASE  
HEARING [DOC. 380]; CERTIFICATE  
OF SERVICE**

**PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S  
MEMORANDUM IN OPPOSITION TO MEHANA KIHOI'S MOTION FOR  
RECONSIDERATION TO DENY THE INTERVENTION OF PERPETUATING  
UNIQUE EDUCATIONAL OPPORTUNITIES AS A PARTY IN  
THE CONTESTED CASE HEARING [DOC. 380]**

COMES NOW PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.

("PUEO"), by and through its undersigned counsel, and hereby respectfully submits the

following Memorandum in Opposition to MEHANA KIHOI'S (hereinafter "Kihoi") Motion for

Reconsideration to Deny the Intervention of Perpetuating Unique Educational Opportunities as a

Party in the Contested Case Hearing.

## **I. BACKGROUND**

As the Hearing Officer knows, PUEO is a Hawai`i non-profit corporation formed by Native Hawai`ians and organized under Hawai`i Revised Statutes Chapter 414D. PUEO was formed: (a) to share the interaction of Hawai`ian culture and science; (b) to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration; and (c) to further educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics.

PUEO's board members and beneficiaries include native Hawai`ians that reside in the Keaukaha-Pane`ewa Hawai`ian Homestead located in Hilo, Hawai`i. PUEO's board members also include native Hawai`ians who seek knowledge and exercise customary and traditional native Hawai`ian rights on Mauna Kea.

In supporting the pursuit of educational opportunities for children of Hawai`i, PUEO supports the building of the Thirty Meter Telescope atop Mauna Kea, as it will greatly enhance the educational opportunities for our children. As stated above, PUEO was formed to, inter alia, share the interaction of Hawai`ian culture and science and to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration. More importantly, PUEO's purposes include furthering "educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics.

As the record will reveal, PUEO is not "aligned" with any of the parties, whether for the Thirty Meter telescope or against it. PUEO has committed great effort in not taking any position in the proceedings so far that would preclude any party from bringing forward relevant, admissible evidence and argument. Despite attacks against it by some parties in the contested

case hearing, PUEO remains committed to finding a compromise between Native Hawaiian cultural practices and unique educational opportunities. PUEO will always welcome *all* Native Hawaiians and members of the scientific community to its membership, in the hopes of fostering mutually beneficial compromise.

On June 17, 2016, PUEO sought admission as a party to the contested case hearing. After a hearing (where any party could timely file opposition), PUEO was admitted as a party, and the Hearing Officer found that “PUEO’s participation will substantially assist the Hearing Officer in her decision making.” *Minute Order No. 13 at page 4.*

About one month later on July 18, 2016, Kihoi filed a Motion to Deny the Intervention of Perpetuating Unique Educational Opportunities as a Party in the Contested Case Hearing [Doc. 98]. The gravamen of Kihoi’s argument was that some or one of PUEO’s board members had a “conflict of interest.”

Kihoi’s motion was heard on August 5, 2016. Minute Order No. 28 [Doc. 351] subsequently followed, denying Kihoi’s motion. In the minute order, the Hearing Officer stated as follows:

The Motion essentially re-argues issues that were heard, considered and decided previously when the decision was made to allow PUEO to participate as a party. In addition, the Motion asserts that members of PUEO have conflicts of interest and PUEO should not be allowed to be a party in this contested case hearing for that reason. There is no basis in the law to preclude PUEO’s participation as a party on the conflict of interest bases asserted by movant.

Kihoi now seeks a reconsideration to have PUEO effectively dismissed as a party. For the reasons stated in this Memorandum, and for the reasons the Hearing Officer found when this request was first heard, Kihoi’s motion/request should be DENIED.

## **II. LEGAL STANDARD**

Hawaii Administrative Rule (hereinafter “HAR”) Section 13-1-39 governs

“reconsideration” in contested case hearings. That section provides as follows:

Reconsideration. (a) Upon a motion of a party, the board may reconsider a decision it has made on the merits only if the party can show that:

- (1) New information not previously available would affect the result; or
  - (2) A substantial injustice would occur.
- (b) In either case, a motion for reconsideration shall be made not later than five business days after the decision or not less than fourteen days prior to any deadline established by law for the disposition of the subject matter, whichever is earlier.

### **III. ARGUMENT**

#### **A. Kihoi’s motion contains unsubstantiated allegations that are not supported by fact or the record.**

Kihoi essentially contends that because Board of Land and Natural Resources Member Stanley Roehrig and PUEO President Shadd Keahi Warfield are acquainted, PUEO somehow should not be allowed to participate as a party in the contested case. This position is absurd and not supported by fact or the present record, nor any law in Hawai`i. Hawai`i Island being a small community, it is not unusual for persons sharing similar interests to interact in many different ways. What is important to note here is Messrs. Roehrig and Warfield at the time were supporting a private nonprofit that had everything to do with the education of children, and nothing to do with supporting the Thirty Meter telescope.

At the onset, it is important to note that among many of Kihoi’s factually inaccurate assertions, Warfield and Roehrig have never physically shared the same office space. Although United States mail was delivered to the Aupuni Street address, the mail was later sent to the Keaukaha address. Based on this erroneous assumption and conclusion, Kihoi goes on to analyze the Hawaii Rules of Professional Conduct, and comes to the conclusion that Mr. Roehrig is in violation of the rules.

Kihoi further draws the erroneous conclusion that Mr. Roehrig and PUEO President

Warfield are in a “business relationship”, and cites to federal law<sup>1</sup> to argue that there is a conflict of interest. This argument is not supported by fact or the record. Mr. Roehrig is a former director of Keaukaha One Youth Development Corporation (“KOYD”). KOYD is not a party to this contested case hearing. As a result, the motion should be DENIED.

**B. Kihoi offers no new information that was previously unavailable, and cannot establish that a substantial injustice would occur if PUEO is admitted as a party.**

Kihoi cannot demonstrate that she offers “new information not previously available (that) would affect the result” of the Hearing Officer’s decision. She essentially argues that PUEO should not be granted intervention because Mr. Roehrig and Mr. Warfield are acquainted and Mr. Roehrig was a former board member of KOYD<sup>2</sup>. These are the very same arguments Kihoi made in her initial motion seeking to have PUEO not admitted as a party [Doc. 98]. Kihoi draws the erroneous conclusion that a party’s acquaintance with a board member summarily means there is a “conflict of interest.” Such a conclusion is incorrect.

Kihoi has offered no new evidence that was previously unavailable. Further, she cannot establish that a substantial injustice would occur if PUEO is admitted as a party, as required by our rules.

After duly considering the motion and hearing argument, this Hearing Officer denied the motion and allowed PUEO to remain a party in the contested case. There is no legal or just reason for a different result here.

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<sup>1</sup> Kihoi cites to a federal case that is misplaced. Neither Mr. Roehrig or Mr. Warfield are federal employees, and this case does not involve any federal statute.

<sup>2</sup> It is important to note that Mr. Roehrig resigned from the KOYD board *before* he was appointed to the BLNR.

**IV. CONCLUSION**

Based on the foregoing, Kihoi's motion should be DENIED.

DATED: Hilo, Hawai'i, October 19, 2016.



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**CERTIFICATE OF SERVICE**

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I hereby certify that a copy of the foregoing was served on the following via the manner listed below:

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DATED: Hilo, Hawai'i, October 19, 2016.



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